Comments on Proceeding 99-25
LPFM processing and Translator processing in light of the LRCA

Robert Moore
9/6/2011

This proceeding has generated numerous comments, many of them based on misconceptions. But the most basic one is that we each have several things we want, and there is a fear that if others are accommodated, we will somehow lose out.

This is an inaccurate model.

Common Concerns and Considerations

First, we all benefit by having the frequencies allocated by rule of law. If special interests are accommodated, that fails and we have chaos and ultimately anarchy. Existing laws must be enforced, and new laws written to deal with future situations, but not past situations. No law can be justly proscribed after the fact - "ex post facto".

Second, we all want frequencies chosen by an orderly process without consideration of the who applicants are. Justice is blind, or, equivalently, a "bill of attainder" regulation is unjust. Each of us will at some time be in the position of victim if favoritism is used to allocate spectrum.

Third, frequencies should be readily available to qualified applicants. The decade long delays in allocating some services has been a boon to no one. New entrants are stymied. Established broadcasters are unable to expand. The bands are becoming ossified and uninteresting. The competition we all face is the iPod, the iPad and the iPhone. These innovations are drawing the hipster generation away from radio. None of us want that.

Fourth, none of us want our spectrum to become like that of the third world where rampant unlicensed stations, overmodulation and inadequate regulatory oversight have made the bands unlistenable. We need order and strong protection from interference.

All these considerations can be accommodated.

SPECTRUM ALLOCATION

But, you say, there is only a little bit of spectrum left and we need to allocate it to specific services. This is patently untrue.

There are tens of thousands of translator/LPFM size channels available in the US, many in the core of urban areas (proven by the huge numbers of translator applications filed in just one week in 2003).

Why were there not comparable numbers of LPFM applications filed in the 2000-2001 LPFM windows? Because, among other things, the LPFM spacing rules do not allow optimal packing of facilities into the spectrum.

The spacing rules used in LPFM have also brought about numerous interference problems across the country, as any experienced consultant can readily attest. Co-channel and first adjacent channel interference is common and no directionalization of antenna facilities is provided to anticipate or protect either facility from interference.

This lack of interference protection in the LPFM service has caused many LPFMs to give up in disgust. Full power broadcaster have had important audiences lost due to LPFMs popping up on their channel in key communities they serve, where they had good signals but the LPFMs were fully spaced. This is particularly true over flat valley floors and coastal areas.

Simply ignoring 2nd and 3rd adjacent facilities to make more channels will not make enough new channels for LPFM's projected growth. And not providing for any interference protection on those channels will introduce interference and degrade the performance of the bands. This is especially true for class B and B1 stations that are located in the populated parts of the country, where a 100 Watt LPFM located near the edge of the protected contour of the station will create a one mile radius area of interference, potentially encompassing an entire town. We need to provide reasonable interference protection for all facilities, just as we have done with translators over the past decades.

EQUALITY

I spoke of equality of applicants, and so does the recent Local Radio act. Translators and LPFMs are to be treated equally.

I propose allowing the proven translator rules to be used for LPFMs as well. This will assure a wealth of channels and also a lack of interference (at least as predicted by the F() curves). This is very evident when comparing the occupancy of the commercial channels and the noncommerical channels. There are many more facilities accommodated without interference on the noncommericial channels and the commercials have needed the 215 rule to be even marginally efficient. Why force the new LPFM service to go through a process that past experience has already been proven to be inefficient and needing ameliorative corrections?

WINDOWS

The translator community has tried to accommodate market factors by moving the few translators that have been granted in the last decade to locations where they would do the most good. This is frowned upon as abuse of process and disingenuous. It would also be unnecessary if new windows were frequent. One could simply apply where they wanted the translator to be ultimately located.

Another concern has been spectrum warehousing, where, in anticipation of long terms between filing opportunities, applicants have filed for more facilities than could be built in a reasonable time. Frequent windows would solve that problem, and eliminate the guessing game of where a need might arise some years in the future.

Careful analysis of the mutually exclusive applications remaining from the 2003 window show they were often put together hurriedly.

For example, one zealous applicant filed a dozen mutually exclusive applications on the same channel (260) in Brooklyn, NY, and thereby got nothing for his efforts. Such applications are, of

course, illegal since you can't file an application that conflicts with another of your applications. The applicant should reduce to a small number of non-mutually exclusive applications.

In many other cases, a few towers were selected by the applicants and numerous channels that would work from those towers were filed. Those applications are also illegal by current statute and the duplicates should be dismissed.

These situations, and similar illegal applications, are easily detected automatically and would greatly reduce the backlog - possibly halving it.

Frequent windows would have discouraged such counterproductive and illegal practices.

To prevent abuses, a new translator should be required to retransmit the station it was applied to be retransmit for the first four years of operation. A similar rule has worked well in preventing abuse in the NCE points system.

DEALING WITH THE BACKLOG

1) Publish the list of mutually exclusive applications in groups. These lists are readily created with mechanical procedures well known to the Commission and to many engineering firms, but publishing them levels the field for the less capable and provides reference numbers for convenient correspondence..

2) Publish a few simple rules that will be used to cull the illegal (by the present rules) applications mentioned above out of the database.

3) Allow unilateral minor mods (using the full extent current rules) to create singletons and award them. No changes that do not create a singleton would be allowed.

4) Republish the existing translator processing rules (enumerated below but never tried).

5) Allow negotiation between applicants, including unlimited buyouts and coordinated minor changes. Yes, the FCC might forgo some income from auctions that would become unnecessary.

6) In the remaining groups where both commercially fed and noncommercially fed translators are present, the noncommercially fed translators are dismissed and the commercially fed translators are either granted (if singletons) or sent to auction.

7) In groups where only noncommercially fed translators are present, sort by the points system as presented in the rules.

This can be done with very little hands-on processing by the FCC staff. The burden lies on the applicants themselves to untangle the situation and only they have the resources to address it.

In no case, violate the rules as they were in place at the time of the window. None of us want to see protracted law suits against the FCC. We have all waited long enough.

FUTURE WINDOWS

Future windows should occur at predictable and frequent intervals - say **monthly** - with reasonable caps - say 50 per applicant - and without the necessity that past window be fully

processed. New applications must fully protect applications from past windows. LPFM and translators may be filed at the same time, using the same rules, and with no preference for one or the other. All applications should be processed using the above procedure, which is already written into law.

ARBITRON MARKETS QUESTIONS

The vast extent of the Arbitron markets (possibly well over a hundred miles across) is unsuitable for legislation involving LPFMs and translators whose protected contour often only extends 3 miles or so. Any proposal designed for 100 kW facilities is far too coarse when applied to 100 Watt facilities.

And, since there is ample spectrum available if the translator interference rules are employed, such a mechanism is also superfluous.

BENEFITS AND DEFICITS

BENEFITS FOR THE LPFM

Hundreds of times more channels available.
Maximum power 250 Watts.
Assurance of no interference.
Minimum power of 10 Watts,no matter what height is used.

DEFICITS FOR THE LPFM

Harder to prepare an application

BENEFITS FOR TRANSLATORS

All legal applications are honored.
The freeze is ended
No need for spectrum warehousing
No need for complex move scenarios and artificial processing delays.

BENEFITS FOR EXISTING BROADCASTERS

The bands become interesting again, retaining the next generation of listeners
Coverage areas can once more be extended to new markets with translators
AM stations can have access to a deep pool of translators for night time listening.
No interference LPFMs allocated without regard to interferences that might be created

CONCLUSION

I propose this is a fair, legal and expedient approach that benefits all parties, yet provides a long term approach to providing viable radio for the immediate and long term future.

Bob Moore